

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WESTERN SECTION

NATIONAL GRID COMMUNICATIONS, INC.,)	
)	
Plaintiff)	
)	C. A. NO. 05-30131-MAP
v.)	
)	
TOWN OF LENOX and)	
LENOX ZONING BOARD OF APPEALS,)	
)	
Defendants)	

AGREEMENT FOR JUDGMENT

WHEREAS this litigation arose out of the application of the Plaintiff, National Grid Communications, Inc., to the Defendant Lenox Zoning Board of Appeals ("the Board") for a special permit and for variances to construct a 130-foot tall wireless communications monopole on property located at 30 Lee Road in Lenox; and

WHEREAS, this Court and the First Circuit Court of Appeals have stated that in appropriate circumstances, settlement of Telecommunications Act cases by means of consent judgments is consistent with the aims of the Act (see, e.g., Brehmer v. Planning Board of Wellfleet, 238 F.3d 117, 121 (1st Cir. 2001), and Patterson v. Omnipoint Communications, Inc., 122 F.Supp.2d 222, 228 (D.Mass. 2000)); and

WHEREAS all parties agree that it is in the public interest to resolve this dispute without further expense and delay, and that there is no just cause for delay, and that further meetings, hearings or decisions would serve no useful purpose;

NOW THEREFORE, the parties hereby stipulate and agree to the entry of Final Judgment in the form attached hereto as Exhibit 1, vacating and modifying the Board's decision and granting Plaintiff relief in the form of a special permit and variances to the

extent necessary to permit it to install and operate a telecommunications facility on the property located at 30 Lee Road in Lenox, Massachusetts in accordance with the application and the plans and specifications as presented at the hearings before the Board, subject to the conditions that the telecommunications monopole shall not exceed 120 feet in height, and the antenna panels of T-Mobile shall be flush-mounted.

The parties further stipulate and agree that the zoning relief should be and is hereby granted pursuant to the Judgment to be entered herein. The Board agrees to issue the zoning relief within thirty (30) calendar days of its receipt of actual notice of the Court's entry of Judgment in accordance with this Agreement for Judgment. In the event such zoning relief is not filed with the Town Clerk within the above time period, this Agreement, including the conditions herein enumerated, shall constitute such grant of relief as prescribed under Chapter 40A, to be recorded in the Berkshire County Registry of Deeds.

Respectfully submitted,

NATIONAL GRID
COMMUNICATIONS, INC.,

By: /s/ Kenneth Ira Spigle
Kenneth Ira Spigle (BBO# 475220)
687 Highland Avenue, Suite 1
Needham, Massachusetts 02494
(781) 453-3900
Facsimile: (781) 453-0510

TOWN OF LENOX and LENOX
ZONING BOARD OF APPEALS,

By: /s/ Jerome J. Scully
Jerome J. Scully (BBO # 449660)
Hannon, Lerner, Cowig, Scully & Bell
184 Main Street, P.O. Box 697
Lee, Massachusetts 01238
(413) 243-3311
Facsimile: (413) 243-4919

Dated: September 12, 2006

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WESTERN SECTION

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Plaintiff)	
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TOWN OF LENOX and)	
LENOX ZONING BOARD OF APPEALS,)	
)	
Defendants)	

JUDGMENT

Upon the filing of an Agreement for Judgment by all parties, and based upon a review of the pleadings and other materials on record, the Court hereby enters the following judgment:

It is ORDERED that judgment shall enter against Defendants Town of Lenox and Lenox Zoning Board of Appeals and in favor of Plaintiff National Grid Communications, Inc., on Count I of the Complaint; and

IT IS FURTHER ORDERED that Count II of the Complaint is dismissed, without prejudice and without costs; and

IT IS FURTHER ORDERED that the Plaintiff's request for injunctive relief regarding the zoning relief as set forth in the Complaint, Prayers for Relief 1, 2 and 3, is GRANTED, and that an injunction in the following form is hereby entered:

1. The decision of the Lenox Zoning Board of Appeals denying Plaintiff's special permit request and variance requests, which was voted on April 6, 2005, and which was filed with the Lenox Town Clerk on April 29, 2005, is hereby annulled; and

2. The Lenox Zoning Board of Appeals is hereby enjoined and ordered,

within thirty (30) calendar days of the entry of this Judgment, to cause to be issued the special permit as initially applied for by Plaintiff, and to cause to be issued variances from Lenox Zoning Bylaw Sections 15.5(9)(D) (to the extent of a sixty foot by sixty foot square), 15.5(9)(I) (overlay district setback), 15.5(9)(H) (height requirements to the extent of 120 feet above ground level), 15.5(7)(A) (use outside district), and 15.5(15)(A) (Town named as insured), subject to the conditions, as set forth in the parties' Agreement for Judgment, that the telecommunications monopole shall not exceed 120 feet in height, and that the antenna panels of T-Mobile shall be flush-mounted; and

3. The Town of Lenox, through its agents, officers and/or duly authorized boards and agencies, is hereby ordered to process, in its usual and customary manner, Plaintiff's application for a building permit for said facility, and, subject to the criteria and standards typically applied to such applications, to issue a building permit for said facility in its usual and customary manner.

United States District Court Judge

Dated: _____, 2006